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June 13, 2014

Mr. Ken Bruno
Acting Program Manager
Gas Safety and Reliability Branch
Safety and Enforcement Division
California Public Utilities Commission
455 Golden Gate Avenue, 7/F
San Francisco, CA 94102

Dear Mr. Bruno:

The Safety and Enforcement Division (SED) of the California Public Utilities Commission conducted a comprehensive General Order (G.O.) 112-E audit of SDG&E's Anti-Drug and Alcohol Misuse Prevention Program on July 30-31 and August 1-2, 2013.

SED used the Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) Comprehensive Audit and Inspection Protocol Form No.: 3.1.11 as a reference guideline to conduct the audit for compliance with G.O. 112-E, Reference Title 49 Code of Federal Regulations (CFR), Parts 199 and 40. SED did not observe any probable violations, but noted several issues and made recommendations. Attached is SDG&E's response to the suggested recommendations in the document "SDG&E Anti-Drug and Alcohol Misuse Prevention Program Audit Summary" as related to the protocol questions provided in PHMSA Comprehensive Audit and Inspection Protocol Form No.:3.1.11.

Please feel free to contact me at (213) 305-8660, if you have any questions or need additional information.

Sincerely,

W. Jeff Koskie
Pipeline Safety and Compliance Manager

Attachments

Cc: Elizaveta Malashenko, Deputy Director, SED
Joel Tran, CPUC-Sacramento

Attachment 1
Response to Audit Observations

A. Audit Observation Identified from Inspection Protocol Question C.01.a, Pre-employment Investigation and Drug Testing, Reference Title 49 CFR Parts 40 and 199, §40.25 and §199.105(a).

Protocol Question C.01.a. states:

“Verify that drug testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)].”

SDG&E provided documentations that showed it requested testing information from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time. However, SDG&E’s written Anti-Drug and Alcohol Misuse Prevention Program Plan did not clearly specify this requirement. SED recommends that SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan clearly specify that information from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time will be requested and retained.

Response to Item A

SDG&E finds that the recommended language would clarify the existing Anti-Drug and Alcohol Misuse Prevention Program Plan, and will add the recommended language to the Plan.

B. Audit Observations Identified from Inspection Protocol Question C.01.b, New Personnel Drug Testing, Reference Title 49 CFR Parts 40 and 199, §§40.25 and §199.105(a)

Protocol Question C.01.b states:

“Verify that no new personnel (new hire, contracted, or transferred employees) are used to perform covered functions unless that person passes a drug test or is covered by an anti-drug program that conforms to Part 199 [§199.105(a)].”

SDG&E currently has a requirement that all new personnel (new hire, or transferred employees) pass a drug test before the new personnel are used to perform covered functions. In order for SDG&E to verify that all new personnel added into the covered function poll have met these requirements, SDG&E conducts a quality control audit of its system. However, SDG&E’s written Anti-Drug and Alcohol Misuse Prevention Program Plan did not specify how it verifies that its program is capturing all individuals designated as new hire, contracted, or transferred employees and validates that they passed a drug test before they are used to perform covered functions. SED recommends that SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan clearly specify how it monitors and validates this policy.

Response to Item B

SDG&E has provided extensive training with regard to pre-employment and pre-assignment testing to internal parties who are responsible for hiring or transferring employees into Safety

Sensitive jobs. In addition, SDG&E has created an exception report that captures new incumbents in PHMSA safety sensitive positions. Prior to random selections, SDG&E references this report and is able to verify and ensure that the individual has had a pre-employment/assignment test and previous employer data (as applicable) has been sought before the random selection occurs. These processes are included in procedures and guidelines other than the Anti-Drug and Alcohol Misuse Prevention Program Plan. As a result, we do not propose to add language to the Plan.

C. Audit Observations Identified from Inspection Protocol Question C.05.a, return-to -duty testing, Reference Title 49 CFR Parts 40 and 199, §§40.67(b) and §199.105(e)

Protocol Question C.05.a states:

“Verify that a covered employee that violates DOT drug regulations does not return to duty for a covered function until the employee:

3. As of August 31, 2009, verify that all return-to-duty testing was performed under direct observation [§40.67(b)]”

SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan, Section B.5.a, did not clearly state the use of “direct observation” in all its “return-to-duty testing” even though it has always performed direct observation for all return-to-duty testing since August 31, 2009. SED recommends that SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan clearly state the use of “direct observation” in all “return-to-duty testing” and all “follow up tests” as applicable.

Response to Item C

SDG&E finds that the recommended language would clarify the existing Anti-Drug and Alcohol Misuse Prevention Program Plan, and will add the recommended language to the Plan.

D. Audit Observations Identified from Inspection Protocol Question H.02.b, Available Resources for Employees, Reference Title 49 CFR Parts 40 and 199, §§40.285(b) and §199.243(a)

Protocol Question H.02.b states:

“H.02.b. Verify that the Alcohol Misuse Prevention Program assures that each covered employee who has engaged in conduct prohibited by §§199.215 through 199.223 shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol. This includes the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs [§40.285(b) and §199.243(a)].”

SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program developed an employee wellness resources brochures and posters to communicate its Anti-Drug and Alcohol Misuse Prevention Program policy and how to access available resources through its EAP. SDG&E communicated the wellness information to its employees through bulletin board announcements and etc. However, SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan did not address available resources for employees. SED recommends that SDG&E’s Anti-Drug and Alcohol

Misuse Prevention Program Plan address available resources for employees and how and where to access these resources.

Response to Item D

SDG&E finds that the recommended language would clarify the existing Anti-Drug and Alcohol Misuse Prevention Program Plan, and will add the recommended language to the Plan.

E. Audit Observations Identified from Inspection Protocol Question J.04.a, Return-to-duty Alcohol Testing, Reference Title 49 CFR Parts 40 and 199, §§40.305(a), §199.225(c), and §199.243(c)

Protocol Question J.04.a states:

“Verify that a covered employee that engages in conduct prohibited by §§199.215 through 199.223 does not return to duty for a covered function until the employee:

- 1. Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), §199.235, and §199.243(b)], and*
- 2. After completion of the SAP process above, undergoes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 [§40.305(a), §199.225(c), and §199.243(c)].”*

SED reviewed SDG&E’s records which demonstrated that SDG&E requires and enforces the provisions of §§40.285(a), §40.289(b), §40.305(a), §199.225(c), §199.235, §199.243(b), and §199.243(c). However, SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan did not clearly specify that a covered employee must complete the aforementioned conditions before return to duty. SED recommends that SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan clearly state that covered employee that engages in conduct prohibited by §§199.215 through 199.223 does not return to duty for a covered function until the employee completes the following:

- 1). Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), §199.235, and §199.243(b)], and
- 2). After completion of the SAP process above, undergoes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 [§40.305(a), §199.225(c), and §199.243(c)].

Response to Item E

SDG&E finds that the recommended language would clarify the existing Anti-Drug and Alcohol Misuse Prevention Program Plan, and will add the recommended language to the Plan.

F. Audit Observations Identified from Inspection Protocol Question H.02.a, Alcohol-Related Prohibited Conduct, Reference Title 49 CFR Parts 40 and 199, §§199.215 through 199.223 and §199.233

Protocol Question H.02.a states:

“Verify that the Alcohol Misuse Plan ensures that a covered employee is not permitted to perform covered functions if the employee has engaged in conduct prohibited by §§199.215 through 199.223 (as outlined below) or an alcohol misuse rule of another DOT agency [§199.233].

..... 3. Using alcohol within 4 hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty [§199.219, Pre-duty use]. ”

SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan stated that a covered employee is not permitted to perform covered functions if the employee has engaged in alcohol consumption within 4 hours but did not address that if an employee is called to duty to respond to an emergency. SED recommends that SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan clearly state that covered employee is not permitted to perform covered functions which include responding to an emergency if the employee has engaged in alcohol consumption within 4 hours or within the time period after the employee has been notified to report for duty [§199.219, Pre-duty use]

Response to Item F

SDG&E finds that the recommended language would clarify the existing Anti-Drug and Alcohol Misuse Prevention Program Plan, and will add the recommended language to the Plan.

G. General Audit Observations with SED’s Recommendations:

- 1). SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan should clearly indicate that its contractors will follow the EBT manufacturer’s Quality Assurance Plan (QAP) and how it will ensure that its contractors comply with this requirement.
- 2). SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan should include the approved DOT alcohol testing form (ATF) in its plan or appendices.
- 3). SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan should clearly state how it identifies each covered employee being tested.
- 4). SDG&E’s Anti-Drug and Alcohol Misuse Prevention Program Plan should require the BAT or STT to explain the testing process to the employee.

- 5). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan should clearly state that it does not conduct alcohol screening tests using a saliva ASD in compliance with §40.245 requirements.
- 6). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan should clearly differentiate Parts 40 and 199 requirements from other additional company's Anti-Drug and Alcohol Misuse Prevention Program policies.
- 7). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan, under Post –Accident Drug and Alcohol Testing should reference its On-Call procedure documents.
- 8). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan should clearly state that the follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months.
- 9). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan should clearly state that it uses a more stringent criteria of prohibiting employees with alcohol concentration measures less than 0.02 alcohol level administered in accordance with §199.225(e) from performing covered functions unless when its contrary to SAP recommendations.
- 10). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan should clarify its "Public Interest Exclusion" (PIE) policy procedures and guidelines.
- 11). SDG&E's Anti-Drug and Alcohol Misuse Prevention Program Plan should clarify its Alcohol confirmation test requirements and reference the procedure if covered on a separate document.

Response to Item G and its subsets

SDG&E finds that the recommended language would clarify the existing Anti-Drug and Alcohol Misuse Prevention Program Plan and will add the recommended language to the Plan, with the exception of recommendations three and four as these items are either self-evident or are not required language in the plan per DOT regulations.